IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 813 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHYABHAI M BARIYA
Versus
STATE OF GUJARAT

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Appearance :
MR JB PARDIWALA for Appellant
MS MITA PANCHAL APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 17/18.08.2006

ORAL JUDGMENT

1. This appeal is preferred against the judgment and order delivered by the Special Judge, Vadodara on 05.10.1991 in Special Case No.5/1987 convicting the present appellant – accused for the offences punishable under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act and under Section 161 of the Indian Penal Code. The present appellant was sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.100/-, in default, to undergo rigorous imprisonment of 15 days for the offences punishable under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act. The appellant was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.500/-, in default, to undergo rigorous imprisonment for 15 days for the offence punishable under Section 161 of the Indian Penal Code. It was directed that both the sentences to

run concurrently.

2. The facts giving rise to the prosecution against the present appellant can briefly be stated as under:-

2.1 On 11.06.1986, the present appellant – accused being Talati-Cum-Mantri of village Magiya Group Gram Panchayat along with Circle Inspector visited the house of the complainant and found that father of the complainant – Kalyanbhai Galabhai Rathva was manufacturing bricks excavating the earth from the Government waste land. This being in breach of prevalent law, a case in this respect came to be instituted against the father of the complainant and relevant statement of the father of the complainant i.e. informant was also recorded. At that juncture, the present accused called the complainant at one side and told him that if complainant wanted to get the case papers filed, he would have to pay Rs.350/- to him [accused]. After some haggling, the amount was reduced to

Rs.250/- by the accused and the complainant – informant was told by the accused that the amount of Rs.250/- must be paid to him [accused] by the complainant-informant on 14.06.1986 at his residence in the evening. The complainant-informant did not intend to pay the amount to the accused and hence, on 13.06.1986, lodged FIR before Police Inspector, Anti Corruption Bureau, Vadodara. The complainant-informant obtained Rs.250/- from one Jesingbhai Chhotabhai. P.I., A.C.B. Vadodara was instructed complainant-informant to come on next day i.e. on 14.06.1986 at 11.30 a.m. At that time, complainant-informant, Police Inspector, Sub-Inspector Mr.Khant, battery operator, along with ultra violet lamp and anthracene powder, went to Dabhoi Rest House. Two panchas were searched by PSI Khant and were brought to Dabhoi Rest House. Panchas were informed about the contents of the complaint filed by the complainant and, thereafter usual experiment of anthracene powder and ultra violet lamp was administrated and executed on currency notes of Rs.250/-

denomination of Rs.100/- two in numbers and one of Rs.50/-, presented by the complainant which were smeared by anthracene powder and after explaining the experiment of anthracene powder, the said muddamal notes were put in shirt pocket of the complainant with the instruction that the complainant was to take out those notes when demands were made by the accused. Panch No.1 – Ramdas Bhopabhai Solanki was instructed to remain with complainant and both of them were to go to the residence of the accused and further panch No.1 was instructed to observe and hear whatever transpired between the complainant and the accused. Panchnama was prepared upto this stage and at about 16.00 hours from Dabhoi, this raiding party started for village Magiya and reached there at about 18.00 hours. The residence of the accused was adjoining to Gram Panchayat office of village Magiya and, therefore, the raiding party got down from the jeep at a distance of half kilo metre from the village, the panch No.1 and the complainant started walking towards the Gram Panchayat office, while panch

No.2 and other persons of raiding party followed them. Thereafter, it was found by the complainant that the accused was out of station and was to reach at about after 6.00 p.m. in bus. Therefore, again panch No.1 and complainant at about 19.45 hours started going towards the Gram Panchayat Office, while others scattered around the office and concealed themselves. Panch No.1 was instructed to light cigarette, when the amount was accepted by the accused. The complainant and the panch No.1, thereafter, went to the residence of the accused where he was sitting in the office wearing lungi and had wrapped towel on upper part of body. According to the complainant, accused inquired about the case and the complainant said that the case was to be filed, on that accused said that give Rs.250/- and the case would be filed. The complainant, therefore, made the payment of Rs.250/- of muddamal notes to the accused. The accused accepted the said notes and, therefore, panch No.1 lighted a cigarette and gave signal to the raiding party members, who were concealed round about the residence, rushed

to the spot and on seeing them, accused dropped muddamal currency notes on the ground and rubbed his hands on lungi and towel which he was wearing. Police Inspector Mr.Mehta reached at the spot, caught the accused with his two hands and introduced himself. In the light of ultra violet lamp, anthracene powder marks were found on the hands of the accused as well as of the complainant. Anthracene powder marks were also discerned on the lungi and the towel worn by the accused. The amount of muddamal recovered from the ground, which was recovered by panch No.1 and in ultra violet lamp those notes were emitting anthracene powder mark and were the same notes, number of which were noted in the first part of the panchnama. Panchnama of second part was prepared and signed by the panchas and the concerned Police Inspector. The raiding party returned to Vadodara, thereafter, the case was registered against the accused for the above said charges. The investigation was carried out by Mr.Mehta, Police Inspector and, thereafter, was handed over to one Police Inspector Mr.Saiyed who

got the sanction to prosecute the accused and charge-sheet for the above said offences came to be filed against the present appellant -accused.

3. On 27.05.1991, charge for the offence punishable under Section 5(2) of the Prevention of Corruption Act, 1988 and under Section 161 of the Indian Penal Code was framed vide Ex.6 to which the accused – appellant denied, except that he was public servant at the relevant time.

4. The prosecution examined three witnesses to prove its case. P.W.1 Kalyanbhai Galabhai Rathva,Ex.9, P.W.2 Ramdas Bhopabhai Solanki, Ex.12 and P.W.3, Prabhashankar Parmanand Mehta, Ex.18,Investigating Officer as well as Police Inspector and leader of the raiding party. The complaint filed by P.W.1 is produced at Ex.9 and panchnama at Ex.13.

5. In the statement recorded of the accused under Section 313 of the Code of Criminal Procedure, the accused denied the case of the

prosecution in toto and submitted by way of answer to a question to that effect that he was falsely involved in a case as he did not co-operate with the complainant. No defence witnesses were examined on behalf of the defence. After hearing both the learned counsels for the parties, the learned trial Judge came to the above said conclusions to convict the present appellant – accused and to sentence him as aforesaid.

6. In this appeal, learned advocate Mr.J.B.Pardiwala and Mr.Amit P. Patel for the appellant and learned APP Ms.Mita Panchal for the respondent – State were heard.

7. Along with the learned counsels for the parties, the record of the case is gone thoroughly and carefully and each of the documents produced by the prosecution as well as evidence of witnesses examined on behalf of the prosecution was taken into consideration and the evidence was re-appreciated.

8. It is not necessary herein to re-produce the evidence of the witnesses verbatim as the same is done by the learned trial Judge in his judgment.

9. P.W.1 – Kalyanbhai Galabhai Rathva corroborating his FIR stated in his deposition that he along with panch No.1 visited the house of the accused wherein accused demanded an amount of Rs.250/- for filing of the case and he paid that amount to the accused. On lighting cigarette by panch No.1, at that juncture, raiding party rushed to the spot and on seeing the raiding party, the accused dropped the amount on the ground which was recovered by the panch No.1, anthracene powder marks on the muddamal notes as well as on the hands of the accused and upon the lungi and towel worn by the accused, were found. In his cross-examination, an attempt is made by the defence that it was not in the power of the accused to get the case filed as the Mamlatdar only could have done that, which is admitted by the complainant. In cross-

examination, an allegation is also made that there was some enmity between the complainant and the accused about obtaining loan from the Bank and for which a certificate was necessary which the accused refused to issue. It was also alleged that one Maheshbhai Master was also refused such certificate and keeping grudge against the accused at the instance of Maheshbhai Master, the complaint came to be filed. The complainant is asked about the location of the Gram Panchayat office at village Magiya. In para-13, it has been asked that in fact the accused refused to accept the amount which was being thrusted by the complainant and accused stated that in fact, it was the duty of the Mamlatdar to file the case and it was not his duty. Though this suggestion is denied by the complainant. In para-14, a contradiction is proved to the extent that the complainant did not offer before the police that while, he first approached the residence of accused he (complainant) stated the accused that his case should be filed and the accused demanded Rs.250/- and stated that he [accused] would file

the case.

10. P.W.2 – Ramdas Bhopabhai Solanki, panch No.1, after stating the experiment carried on at Dabhoi about anthracene powder and ultra violet lamp, stated that he approached the accused along with the complainant, who had worn lungi and wrapped towel on upper part of his body. The complainant and the accused came out of the house and went near one neem tree. They both were exchanging conversion and complainant gave the amount, upon that, he lighted the cigarette, and the raiding party rushed to the spot. P.I. Mr.Mehta caught the hands of the accused and the amount was dropped on the ground. The said amount was recovered by him. In his cross-examination in para-6, he has stated that he and complainant had not gone to the house of the accused and they had the conversation standing out side the house. In para-7, he stated that he lighted the cigarette at 8.45 p.m. He was standing at a distance of 10 to 12 feet away from the accused, and complainant. The complainant looked towards him

and he lighted the cigarette and raiding party reached at the spot. On the question asked by the Court, as to whether he heard any conversation took place between the complainant and accused, he replied that he heard the conversation to the extent that the complainant told that he had brought the money for the circle and requested the accused to get the case filed. The accused stated that the papers were with circle and the matter would be over. He has been alleged in his cross-examination in para-8 that he did not hear any conversation between the complainant and the accused. He admitted that the papers were with the circle, that was stated by the accused. He stated that accused stated that work was to be done by the circle and not by him. He denied that during this conversation, accused did not accept the amount and the amount was dropped on the ground. He denied that the accused attempted to return the money to the complainant and while, the complainant did not accept it, the amount was dropped to the ground. P.W.3 – I.O. and leader of raiding party in all respect corroborated the

prosecution case and panchnama. He has been cross-examined in detail.

11. Learned advocate for the appellant vehemently stressed upon the fact that there was no dependable evidence in respect of demand made by the accused, which is essential ingredients for the offence under Section 5(1)(d) of the Prevention of Corruption Act. There is no evidence of acceptance of the amount as argued by the learned advocate for the appellant. The attention of this Court was drawn to the contradiction in the evidence of the complainant particularly in para-8 wherein the complainant admitted that the case was to be conducted by the Mamlatdar and could be filed only by him. It was submitted that, in fact, the whole story of the prosecution is improbable as the accused was not in a position to file the case, as has been stated by the prosecution. It was argued that on account of one Maheshbhai Master, the complaint came to be filed for which in cross-examination, allegations and suggestions are made. It was

submitted that there is contradiction in the evidence of the complainant as well as in panch No.1 in respect of the situation, when both of them reached at Gram Panchayat office. In para-1 of chief-examination, the complainant in uncertain terms submits that they approached the accused at his residence and he was sitting in the office, while in uncertain terms, panch No.1 stated that they never entered the house of the accused and all the conversation took place out of the house. While complainant in his deposition stated that they entered the house and were made to sit, while accused was standing. It was submitted that applying the yardstick of improbability on account of this contradiction, neither the complainant nor panch No.1 could be believed. Much stress is put up by learned advocate for the appellant upon a contradiction in para-14 of the deposition of the complainant. It was submitted that in his chief-examination, only available evidence for demand is in terms of para-14 of the deposition of the complainant which he admits that he did not state before the

police and, therefore, if this contradiction is believed, then there is no evidence of demand of amount by the accused even in the chief-examination of the complainant. The story as narrated by the complainant is not corroborated by the panch witness i.e. P.W.2. P.W.2 on the contrary submits in para-6 of his deposition that they never entered the house of the Talati i.e. accused and everything happened out side the house of the accused. The attention of this Court was drawn to para-7 of the deposition, wherein it has been stated by P.W.2 – panch No.1 that he was standing at a distance to 10 to 12 feet from the complainant and as soon as the complainant turned face towards him, he lighted the cigarette. It was submitted that nowhere, in his deposition, P.W.2 stated that the accused demanded the money and in pursuance of this, the complainant offered the amount which was accepted by P.W.2. Further, the attention of this Court was drawn to para-8 wherein P.W.2 admitted that the accused stated to the complainant that the papers of the case against the father of the complainant, were not

in possession of the accused but were with the Circle Inspector. P.W.2 also stated that accused told to the complainant that this could be done by Circle Inspector only, eventhough the complainant insisted that the accused should take the amount and do the work as requested by the complainant. Learned advocate for the appellant stressed that the whole story is destroyed by this version of panch No.1 – P.W.2. It was stated that Investigating Officer admitted that during the search of Panchayat office and the house of the accused, the case papers pertaining to the complainant, were not found. Therefore, it is vehemently urged that firstly, neither the complainant nor P.W.2 – panch No.1 stated in their deposition that the accused demanded the money to constitute “obtain” as envisaged by Section 5(1)(d) of the Act. Secondly, so far as acceptance is concerned, in clear terms P.W.2 admitted in his evidence that though the accused stated that it was not his duty to do the job, the complainant insisted that the accused should accept the money and get the case filed. It was,

therefore, argued that there is no cogent evidence for acceptance also. It was submitted that therefore, mere recovery of amount of tainted money would not constitute offence under Section 5(1)(d) of the Act and since there is no demand, no presumption can be raised under Section 4(1) of the said Act. The reliance is placed upon a decision in the matter of **Suraj Mal Vs. The State (Delhi Administration)** as reported in **AIR 1979 S.C. 1408** wherein the Apex Court was pleased to observe that to constitute the offence under Section 5(1)(d), mere recovery of tainted amount is not sufficient and that demand or acceptance be proved by the prosecution beyond reasonable doubt. Learned advocate for the appellant has relied upon the decision of this Court in the matter of **State of Gujarat Vs. Jujarsinh Bhavansinh Vihol & Ors.**, as reported in **1999 (1) G.L.H. 947** wherein this Court observed that no presumption can arise by mere fact of recovery of the tainted amount. The decision of this Court in the matter of **Bharatkumar**

Jaimanishanker Mehta Vs. State, as reported in **1992 (1) G.L.R. 605** is relied upon by the learned advocate for the appellant for the fact that while appreciating the evidence in Prevention of Corruption Act the totality of the evidence must be seen i.e. not the evidence of prosecution alone, but the examination-in-cross, suggestion made by the defence and the evidence laid by the defence and over all circumstances of the case must be appreciated to come to the conclusion. The decision of the Apex Court in the matter of **Subash Parbat Sonvane Vs. State of Gujarat**, as reported in **2002 Cri.L.J. 2787** is relied upon by the learned advocate for the appellant to contend that there must be evidence on record that the accused obtained any amount by corrupt or illegal means. In paras-6 and 7 of the decision, while dealing with Section 13(1)(d) of the 1988 Act, the Supreme Court observed that element of obtainment must be proved by the prosecution. It was argued that there is nothing on record that the accused put the complainant in a position that the complainant would have to

part with the money. It was submitted that element of compulsion which is included in obtainment is totally absent from the facts of the present case. Therefore, it is contended that neither demand is proved nor receipt of the amount is proved by the prosecution as to attract ingredients of Section 5(1)(d) of the Prevention of Corruption Act, 1947 nor ingredients of Section 161 of the Indian Penal Code. It is submitted that the recovery of muddamal notes is effected from the ground and not from the person of the accused and when totality of the evidence is considered, the prosecution has failed to prove its case beyond reasonable doubt as the evidence of the complainant is doubtful in respect of demand and acceptance, while he is not corroborated on material particulars by panch No.1 as above said. Therefore, it is submitted that the appellant – accused is required to be acquitted. By way of an alternative argument, learned advocate for the appellant contended the reduction of sentences in case the appeal is dismissed. Learned advocate for the appellant has

placed on record an affidavit of the accused sworn in by him on 08.08.2003 depicting his predicament and special circumstances, if he has to undergo imprisonment. Learned advocate for the appellant relied upon certain decisions on this aspect also and these decisions are; (1) in the matter of **Tarsem Lal Vs. State of Haryana**, as reported in **AIR 1987 S.C. 806**; (2) in the matter of **T.M.Joseph Vs. State of Kerala**, as reported in **AIR 1992 S.C. 1922**; and (3) in the matter of **Vishnu Nagnath Deshmukh Vs. State of Maharashtra**, as reported in **2001 Cri.L.J. 483**.

12. As against that learned APP Ms.Mita Panchal for the respondent – State, supporting the decision impugned in the appeal, submitted that the case of the prosecution is proved beyond reasonable doubt. It was submitted that demand or obtainment has to be seen from the FIR filed by the complainant wherein the demand is made and there is consistent evidence through out in this respect. It is submitted that in the evidence of

the complainant and in the evidence of panch witnesses, there may be minor discrepancies but those discrepancies should be ignored in appreciating the evidence as a whole. It is submitted that a piece of sentence stated in the evidence must be read with reference to the whole evidence and not in isolation. The attention of this Court was drawn to the reasoning of the judgment impugned wherein it has been held that presumption under Section 4(1) from the evidence recorded could be raised and as against that the accused failed to dislodge the said presumption. It is submitted that through out in the evidence consistently it is proved that the hands of the accused were tainted with anthracene powder marks and lungi as well as towel worn by the accused were also tainted of such marks. The story is credible and there is no reason to disbelieve these witnesses as nothing could be brought on record as to why the witnesses and police officer would attempt to frame this particular accused in a false trap case. Learned APP has relied upon the decisions and submitted that while

appreciating the evidence, endeavour should be to bring about the truth, and in that process, the contradictions and inconsistencies in the evidence, not affecting the core of the prosecution case, should be ignored. A decision of the Apex Court, in the matter of **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat**, as reported in **AIR 1983 S.C. 753** is relied upon by the learned APP for principles of appreciating the evidence. A decision of this Court, in the matter of **State of Gujarat Vs. Tajbhai Karimbhai**, as reported in **1999 (1) GLR 831** is relied upon for proposition of law that for establishing the offence under Section 5(1)(d) demand is not necessary to be proved when acceptance of the bribe money is proved. A decision of this Court, in the matter of **State of Gujarat Vs. Ghanshyamsinh Ranchhodsinh Vaghela**, as reported in **1997 (1) GLR 751** is relied upon to contend that the deposition of Investigating Officer i.e. Police Officer corroborating the prosecution case must be given due credence. A decision of the

Apex Court in the matter of **State of West Bengal Vs. Kailash Chhandra Pandey**, as reported in **2005 (1) G.L.H. 248** is relied upon to contend that when the trial Court had an opportunity to observe the witness, the appreciation of the trial Court giving credit to such witness should not be brushed aside lightly. It was contended that minor discrepancies and cosmetic contradictions must not be given weightage to discard the evidence of credible witnesses. It was urged that the appeal deserves to be dismissed.

13. Having heard learned counsels for the parties at length, while re-appreciating the evidence though it must be borne in mind that the trial Court had an opportunity to observe the witnesses physically and come to the conclusion, but even from the evidence recorded on re-appreciation, the Court is required to exercise due diligence and the standard of such exercise would be of an exercise by prudent person. The level of understanding and power of perception of

individual witness and probability in ordinary course of nature about occurring of the incident, as might have been witnessed by the witnesses, must be assessed by the yardsticks of a prudent person. It must be an endeavour on the part of the Court to find out the truth as there cannot be any iron casting prosecution case. The evidence of the witnesses cannot be discarded totally merely on account of certain variations and infirmities pointed out or even on additions and embellishment noticed unless they are of such nature as to undermine the very substratum of the evidence which would destroy the root of the prosecution case. Unless, the contradictions are of material dimension the same should not be used to jettison the evidence in its entirety.

14. The contention has been raised that the obtainment as envisaged by Section 5(1)(d) of the Prevention of Corruption Act, 1947 is not proved as the same requires some prompting on the part of the accused. In this respect, in the matter of **M.W. Mohiuddin Vs. State of Maharashtra**, as

reported in **(1995) 1 SCC 567**, the Apex Court observed that when once the requirement namely that the accused came into possession of the money is satisfied then the only inference is that he accepted the same and thus obtained the pecuniary advantage. The Apex Court also further observed that whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances of each case. In case before the Supreme Court, it was proved that the accused made a demand and also got the affirmation from the complainant that he had brought the demanded money before entering the hotel and at his instance, the complainant wrapped the money in the handkerchief which was given by the accused and placed the same in the bag which was brought by the accused as asked by him. In these circumstances, the Apex Court observed that considering all steps which the accused had taken, the accused had in fact 'obtained' the pecuniary advantage, namely, that

he received the illegal gratification and, therefore, the prosecution had fully established that the accused accepted the bribe money and thus obtained the pecuniary advantage thereby committing the offence completely. While in the matter of Subash Parbat Sonvane Vs. State of Gujarat (Supra) as relied upon by the learned advocate for the appellant referring to the decision in the matter of M.W. Mohiuddin Vs. State of Maharashtra (Supra), the same principle reiterated by the Apex Court, but on facts in the matter of Subash Parbat Sonvane Vs. State of Gujarat (Supra), the complainant was not supporting the prosecution case on the points of demand and acceptance and that further from the evidence of panch witnesses, it was not clear that there was any demand made by the accused and amount was paid to him by the complainant, and hence the accused came to be acquitted.

15. As it appears from the rule laid down is that right from demand to acceptance of money, all steps are required to be proved by the

prosecution and once the amount is transferred and received, obtainment as envisaged by Section 5(1)(d) of the Act said to have been proved. It all depends upon the facts and circumstances of each case, the facts remains that the obtainment as envisaged by Section 5(1)(d) is required to be proved and above are the guide lines of the Apex Court that when such “obtainment” is said to have been proved by the prosecution.

16. It is not the rule of law that such an obtainment is to be proved by the prosecution by the direct evidence. This fact can be proved even by indirect evidence and as a necessary inference drawn from the proved fact. In some cases, mere passing of money may be sufficient to infer the obtainment which includes demand and acceptance both. What is required to be proved is that the accused accepted or agreed to accept gratification, direct evidence is one of the modes through which a fact can be proved, but that is not only the mode envisaged in the Evidence Act. This is so because proof of the

facts depends upon the degree of probability of it having existed and the standard requirement for reaching the supposition must be of a prudent man acting in any important matter concerning him.

17. Now re-appreciating the evidence in the present case, it must be borne in mind that the basic evidence of the complainant about its filing FIR placed on record at Ex.11 is proved beyond reasonable doubt by the prosecution. In his evidence, complainant P.W.1 at Ex.9, in para-1 of his deposition in unequivocal terms deposed that on 11.06.1986, Circle Inspector and the accused visited their house. They prepared case papers in respect of the fact that the father of the complainant was manufacturing bricks excavating the earth from the Government waste land. The statement of the father of the complainant was also recorded. Now in these circumstances, as deposed by the complainant, he was drawn in one side by the accused and after taking him in isolation accused demanded that if

the said case was to be filed, the complainant had to pay Rs.350/-. On expressing his inability to pay such amount, the accused agreed to take Rs.250/- and further instructed the complainant to pay him on 14.06.1986 at his residence. Now this piece of evidence is amply corroborated by FIR lodged by the complainant and by Investigating Officer, P.W.3 at Ex.18 wherein in paras 1 and 2, P.W.2 stated that the complainant visited ACB Police Station and offered his complaint which was at Ex.11. Now this piece of evidence which is proved beyond any reasonable doubt could not be shaken by the defence in cross-examination so as to arrive at the conclusion that whatever was stated by the complainant was not credible to the extent of disbelieving the same. There is nothing on record or could be brought to infer that there was some enmity or reasonable cause for the complainant to approach ACB Police Station and to lodge a complaint. Consequently, the fact that revenue circle and the accused visited the house of the complainant where the accused demanded

gratification stands proved. Along with this, it must be considered that whether it was within the power of the accused to get the case filed or not, would not be material. This is so because in statutory provisions itself in Section 5(1)(d), it is engrafted that when a public servant abusing his position as such obtains for himself or for any other person any gratification, the offence is said to have been committed. Talati-Cum-Mantri i.e. the accused was at the relevant juncture did visit along with Circle Inspector at the residence of the complainant. Talati-Cum-Mantri is very important link in hierarchical chain of revenue authorities. He was in position to impress upon the complainant that he would be capable of getting the case filed on payment of gratification. In all probabilities and in the circumstances, it was reasonable and natural for the complainant to believe that the matter could be disposed of by paying gratification to the accused.

18. Now the evidence which is led by the

prosecution at the time of trap must be considered in light of the above proved facts. Learned advocate for the appellant drew attention to some part of the evidence of P.W.1 – complainant and P.W.2 – panch No.1 and contended that there are contradictions inconsistencies which destroys the prosecution case.

19. It must be borne in mind that the appreciation of the evidence is a dispassionate process to search for the truth and going through the evidence of these two witnesses, though there are contradictions or inconsistencies, the truth prevails that the amount was demanded by the accused and accepted. The contradiction which is pleaded by the defence is incorporated in para-14 of the deposition of P.W.1, in respect of, complainant did not state before the police that the accused demanded the amount of Rs.250/- at the time of trap. Only because P.W.1 did not state before police this verbatim phrases, it cannot be said that P.W.1 resiled from stating that the accused demanded the amount of bribe. As

observed above, it is never rule of law that in terminology, witnesses should state that the amount of bribe so demanded. This fact could be inferred from the totality of the circumstances of the evidence recorded at the trial. It must be noted that in para-13 in unequivocal terms in examination-in-cross, P.W.1 stated that when they approached at the residence of the accused, the accused was taking bath and, therefore, they were made to sit. Within five minutes accused came out. He had worn lungi and wrapped towel on upper part of his body. The accused asked P.W.1 that what had he done. The complainant P.W.1 replied that in pursuance of their agreement, he (P.W.1) had come to deliver the amount. At that time, the accused stated that let them go out side. Now this evidence if appreciated in light of the first part of the evidence and further with the evidence of P.W.1 as to delivery of the amount of Rs.250/- to the accused, an unequivocal inference which could be drawn from the facts recorded in the shape of evidence is only that the accused demanded the amount of bribe in pursuance of

earlier agreement. It is the specific version of P.W.1 that on receiving the money and on seeing the raiding party approaching him, the amount of Rs.250/- was dropped on the ground by the accused and he rubbed his hands on lungi and towel. In para-13 in the latter part, he emphatically denied the suggestion that the accused stated that the said work was within the power of Mamlatdar and, therefore, refused to accept the amount even then the complainant – P.W.1 attempted to thrust the amount towards the accused and in that process the amount had fallen on the ground. Likewise on material particulars, P.W.2, panch No.1 corroborated the say of P.W.1. It is not material that P.W.2 states that he and complainant did not enter in the house of the accused and conversation took place out side the house. The witnesses were deposing before the trial Court after four years of the incident. The the principles for appreciating the evidence of a witness as laid down by the Apex Court in the matter of Bharwada Bhoginbhai Hirjibhai (Supra) must be taken into consideration. The material

part of the prosecution case is, out side the house of the accused, he demanded the bribe money which was paid to him by the complainant and on seeing the raiding party approaching him, he grounded the money. True that in para-7 of his deposition P.W.2 stated that he was standing 10 to 12 feet away from the complainant and the accused and as soon as complainant turned the face towards him, he lighted cigarette by way of signal. Learned advocate for the appellant made an attempt to build a case that even P.W.2 did not speak anything about the demand so as to conclude obtainment which is the essence of the offence. It must be borne in mind that what is stated in para-7 of earlier part cannot be read in isolation of what is stated by P.W.2 in his evidence earlier as well as thereafter. In para-7 itself an answer to question asked by the Court in unequivocal terms, P.W.2 stated that he did hear the conversation between the complainant and accused to the extent that the complainant stated that the matter was about the amount of circle and that he had brought the amount and requested

the accused to get the case filed. The accused stated to the complainant that the papers were with the circle and the work would be done. When this statement of P.W.2 is considered along with the other statement made by P.W.2 in para-8, it leaves no room for doubt that the accused obtained bribe amount and received the same, and the say of P.W.1 thus is corroborated by P.W.2. The evidence recorded must be read as a whole and together. When material part is read i.e. latter part of para-7 of the evidence is read with evidence of P.W.2, as a whole, it can clearly be inferred that the accused demanded the amount of bribe and accepted so as to corroborate the say of P.W.1. P.W.3 – Police Inspector Mr.Mehta in all respects corroborates the say of the P.W.1 and P.W.2.

20. Other important circumstantial evidence along with the above fact must be considered together. The finding of anthracene powder marks on the hands of the accused and finding of anthracene powder marks on the lungi and towel

corroborates the say of P.W.1 and P.W.2. These facts could not be shaken during cross-examination though the case of the accused in his statement under Section 313 is of total denial. While an attempt is made to ask the suggestion in cross-examination that the amount though refusal on the part of the accused attempted to be thrust in the hands of the accused and so there were marks of anthracene powder. It was also argued that in anxiety, accused might have rubbed his hands in lungi and towel causing anthracene powder marks, but this explanation would not probablize the defence case that amount was being thrusted upon the accused. Firstly, there is total denial on the part of the accused as above said. Secondly, the suggestion made by the defence in this respect came to be emphatically denied by the witnesses and nothing turns out from that. Thus, the over all appreciation of the evidence undoubtedly leads to infer that for filing of the case, the accused demanded the gratification which he accepted during trap and was caught red handed.

21. True it may be that the presumption under Section 4(1) may not be available so far as under Section 5(1)(d) is concerned, but the said presumption is available for the offence under Section 161 for which the accused is charged. The presumption may be of factual presumption or discretionary presumption and legal presumption. The factual presumption or discretionary presumption may fall within the scope “may presume”, while legal presumption falls within “shall presume”. The only condition for drawing legal presumption under Section 4 is that during trial, it should be proved that the accused had accepted or agreed to accept any gratification, the section does not lay down any rule that it must be proved through direct evidence. As re-appreciation undertaken by this Court, the presumption under Section 4(1) undoubtedly must be raised in the facts and circumstances of this case and this presumption is not dislodged by the accused as the case of the defence could not be probabilized. True it is that primarily, it is

the duty of the prosecution to prove the case beyond reasonable doubt following the principles laid down to appreciate the evidence for the search of the truth. When grains are segregated from chaff, the case of the prosecution is found proved and hence the compulsory presumption arises as to receipt of the amount of bribe by the accused. Further, the presumption is an inference drawn from certain facts which are proved facts. While inferring the existence of a fact for existence of other, Court is only applying a process of ordinary reasoning which the mind of prudent man would do under similar circumstances. The presumption is not a final conclusion to be drawn from the other facts, but it could as well be final, if it remains undisturbed during trial. Thus, while about receipt of money where a statutory presumption under Section 4(1) is raised for obtainment, the other presumption which is envisaged by Section 114 of the Evidence Act is also available. During trial, neither statutory presumption nor discretionary presumption could be dislodged by

the defence as some burden is shifted on the accused.

22. Thus, as a result of the above discussion, the submission made on behalf of the appellant in respect of merits of the case, cannot be accepted and the conclusions arrived at by the trial Court after due appreciation of evidence on record cannot be interfered with for the above said reasons. So far as merits of the matter is concerned, this appeal has no substance.

23. At the same time, alternative arguments advanced by learned advocate for the appellant about reduction of sentences awarded for each count is required to be considered in light of the circumstances arising out of peculiar facts and predicament of the appellant. This is a case under 1947 Act wherein a discretion is given to the Court vide proviso of Section 5(2) of the Act to award sentences less than minimum for the reasons recorded. As aforesaid, learned advocate

for the appellant relied upon certain decisions on this aspect. It has been submitted by learned advocate for the appellant as well as affidavit of the appellant is also filed that the alleged incident occurred on 11.06.1986 i.e. before more than two decade. In 1989, the appellant was removed from his public office and his retirement benefits were seized of, that too in 1989. For the special reasons, it has been also contended that the appellant had three sons and by the hands of nature, he lost his three sons. His eldest son expired at the age of 33 years in 2005 leaving behind a widow and minor child of two years. Further misfortune stalked, the shadow of the appellant, as after demise of his son, his daughter-in-law left the matrimonial home leaving behind two years old son in the care of the appellant. At present according to the appellant, he himself and his wife are only surviving person in the family to look after his two years old minor grand-son. It is submitted further that the wife of the appellant is a heart patient and suffered lot of mental pain on account of these

proceedings and especially, the appellant lost his job. It was submitted that the wife of the appellant is sick to the extent that she is confined to bed on account of paralysis. At present, the appellant is the only person to look after one infant and his sick wife. In furtherance of his misfortune, the appellant sustained accident in 1994 causing compound fracture in right hand which resulted in permanent disablement preventing the appellant from doing manual work. Therefore, in those special circumstances, it was urged that the quantum of sentences awarded upon the appellant be reduced to reasonable extent. If the appellant had to remain in Jail for longer period, his sick wife and minor grand-son will have to suffer further misfortune.

24. Considering these arguments advanced by the learned advocate for the appellant, though it is made clear that long pendency of proceedings itself may not be a ground of reduction of sentence as it is now a common phenomena and that

having regard to the object of enacting the Prevention of Corruption Act, the issue of reducing of sentences can be considered.

25. In my humble opinion, what is stated in affidavit by the appellant and submitted by learned advocate for the appellant are sufficient or adequate reasons for reduction of sentences of imprisonment, while maintaining the amount of fine imposed. Having regard to the object of the Prevention of Corruption Act, ends of justice would be met, if the sentence of imprisonment for each of the counts is reduced to three months rigorous imprisonment instead of awarded by the trial Court.

26. In the result,this appeal is partly allowed. While maintaining conviction for the offence punishable under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947, the sentences of imprisonment is reduced to three months rigorous imprisonment instead of two years rigorous imprisonment as awarded by the

trial Court in the judgment impugned. The amount of fine is kept undisturbed. Likewise, while maintaining the conviction for the offence punishable under Section 161 of the Indian Penal Code, the sentence of imprisonment is reduced to three months rigorous imprisonment instead of sentence of imprisonment of one year rigorous imprisonment as awarded by the trial Court to the appellant and the amount of fine is kept undisturbed. The sentences of imprisonment as awarded for the offences punishable under Section 5(1)(d) to read with Section 5(2) and the sentence of imprisonment awarded for the offence punishable under Section 161 of the Indian Penal Code as aforesaid, both shall run concurrently. Rest of the appeal stands dismissed. The bail bonds of the appellant stand cancelled. The appellant to surrender before the trial Court for serving of sentence of imprisonment as aforesaid within three weeks from today.

[J. R. VORA,J.]

(vijay)